

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIANE EBERLE	:	
3839 East State Road,	:	Case No. 2:18-cv-1100
Elida, Ohio 45807	:	
Plaintiff,	:	
v.	:	Judge _____
AMERICAN ELECTRIC POWER	:	
SYSTEM LONG-TERM DISABILITY	:	Magistrate Judge _____
PLAN,	:	
c/o AMERICAN ELECTRIC POWER	:	
SERVICE CORPORATION,	:	
Plan Administrator,	:	
American Electric Power	:	
1 Riverside Plaza, 15th Floor	:	
Columbus, OH 43215	:	
Defendant.	:	

COMPLAINT

For her complaint against the defendant, the American Electric Power System Long-Term Disability Plan, Plaintiff Diane Eberle states as follows:

Parties

1. The Plaintiff, Diane Eberle, was at all relevant times an employee of American Electric Power, and by virtue of that employment, a participant in the Long-Term Disability Plan.
2. The American Electric Power System Long-Term Disability Plan (the “Plan”) is a welfare benefit plan established and maintained by American Electric Power Service Corporation under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §1001, *et seq.*

Jurisdiction and Venue

3. This is a claim for benefits under ERISA. The Court has jurisdiction under 29 U.S.C. §1132.

4. The Plan is administered, in part, in Franklin County, Ohio. Venue is proper in the Eastern Division of the Southern District of Ohio.

Facts

5. Plaintiff, Diane Eberle, has worked for American Electric Power (“AEP”), or one of its subsidiary companies, since 1989.

6. At all times relevant, Ms. Eberle has been under the regular care of a doctor.

7. For about the last 21 years that she worked, Ms. Eberle was employed by AEP as a Stores Attendant A, a heavy exertion occupation requiring her to lift 70 pounds.

8. This occupation also required that she be able to safely operate heavy equipment and road vehicles.

9. In July, 2014, Ms. Eberle began experiencing pain in her low back with right leg weakness and numbness.

10. She sought treatment for these illnesses.

11. From July 30, 2014 to December 2, 2014, Ms. Eberle was unable to work.

12. In September, 2014 Ms. Eberle underwent lumbar spine surgery.

13. Unfortunately, Ms. Eberle recovery from back surgery was unsuccessful.

14. Ms. Eberle also suffered numbness and painful conditions in her left arm, right arm, and right shoulder.

15. Ms. Eberle tried to return to work and manage her pain with medical treatment.

16. In April, 2015, Diane Eberle became unable to work due to pain in her low back, inability to walk correctly due to an unsteady gait, right lower extremity weakness and numbness, left hand numbness, right hand numbness, and right shoulder pain.

17. An MRI taken of Ms. Eberle's spine on April 7, 2015 revealed a disc bulge with central canal stenosis at L5-S1.

18. In April, 2015, Ms. Eberle's physician certified her to be disabled from her occupation due to these conditions by submitting the certification to American Electric Power.

19. Ms. Eberle applied for and received short-term disability benefits.

20. Ms. Eberle then applied for long-term disability benefits from the Plan.

21. Ms. Eberle's initial application for long-term disability benefits was approved.

22. The Prudential Insurance Company of America, ["Prudential"], a plan fiduciary, paid Ms. Eberle long-term disability benefits from July 2015 to July 2016.

23. Prudential encouraged Ms. Eberle to seek and pursue Social Security Disability Benefits (SSDI).

24. Prudential provided Ms. Eberle with services to assist her to seek SSDI benefits.

25. In 2018, Ms. Eberle was awarded Social Security Disability Insurance benefits.

26. Prudential terminated Ms. Eberle's long-term disability benefits by letter dated April 22, 2016.

27. Ms. Eberle appealed that denial on October 18, 2016.

28. On January 13, 2017 Prudential upheld its termination of benefits.

29. Ms. Eberle appealed this decision a second time.

30. Prudential upheld its denial again on March 28, 2017.

31. Ms. Eberle exhausted the administrative remedies available to her under the Plan.

Count I

32. The foregoing allegations are incorporated by reference as if fully rewritten herein.

33. Diane Eberle brings this action under 29 U.S.C. §1132(a)(1)(B) and seeks long-term disability benefits, and any other earned incentives, including contributions to her retirement fund from her employer, that she was denied due to the Defendant's arbitrary and capricious denial of her long-term disability benefits.

34. Ms. Eberle is disabled and unable to work at any occupation.

35. Ms. Eberle satisfies the definition of disability under the terms of the Plan and is entitled to benefits.

36. The Plan's fiduciaries acted arbitrarily and capriciously in denying Ms. Eberle long-term disability benefits, *inter alia*, by refusing to credit the opinions of her physicians, by refusing to take into account the effect of her medications on her ability to work.

37. Ms. Eberle seeks an order awarding her long-term disability benefits under the Plan.

38. Ms. Eberle also seeks an order awarding her employer contributions to her retirement fund that she lost due to the arbitrary termination of her long-term disability benefits.

WHEREFORE, Plaintiff Diane Eberle asks the Court to award judgment in her favor, as follows:

- A. Declaring that she is disabled under the terms of the Plan;
- B. Ordering the Plan to pay, in a single lump sum, an amount equal to the benefits that Ms. Eberle should have been receiving since the date her benefits were arbitrarily terminated by the Defendant and continuing to the date of judgment;
- C. Ordering the Plan to begin paying Ms. Eberle monthly disability benefits in accord with the terms of the Plan and continuing until she no longer satisfies the Plan's definition of disability;
- D. Awarding pre-judgment and post-judgment interest;
- E. Awarding attorney's fees and the costs of this action; and
- F. Awarding such other and further relief as the Court determines to be equitable and just.

Respectfully submitted,

/s/ Lesley H. Kuhl

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